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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/172975

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 21, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by Care Wisconsin to discontinue a service under the Family Care Program (FCP), a hearing was held on May 24, 2016, at Madison, Wisconsin, with the parties appearing by telephone. A hearing set for April 21, 2016 was rescheduled at the petitioner's request, and a hearing set for May 19 was rescheduled by the Division of Hearings and Appeals.

The issue for determination is whether the agency correctly discontinued acupuncture/massage therapy for pain.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Care Wisconsin  
2802 International Lane  
Madison, WI 53704-3124

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County. She is eligible for the FCP with Care Wisconsin as her Managed Care Organization (MCO).
2. Petitioner suffers from chronic pain, particularly in her neck and shoulder. In July, 2014 the MCO authorized weekly acupuncture therapy through Oriental Bodywork. Eventually the treatment

- increased to ten times per month, and it began to incorporate other modalities such as massage therapy.
3. The agency reviewed petitioner's situation in early 2016, including doing a new functional screen in January. The team became concerned because petitioner reported extreme chronic pain continuing in her neck and shoulder (petitioner recently described her pain as "off the charts"). The agency then asked the acupuncturist at Oriental Bodywork to present a treatment plan with expected prognosis due to concerns that the treatment was ineffective with no expected end date.
  4. [REDACTED] from Oriental Bodywork responded twice, with the second letter dated February 27, 2016 (the first response was not provided to me by either party). He acknowledged that petitioner continues to have extreme pain (10 out of 10) but that she has adjusted to it mentally. He anticipated that the treatment would continue indefinitely.
  5. Care Wisconsin policy is that alternative treatment such as acupuncture and massage therapy should be for the short term only. The agency therefore sent petitioner a notice dated March 1, 2016 informing her that treatment at Oriental Bodywork would end after March 31, 2016 there has been no improvement nor has an end date been sent. Services have continued pending this decision.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The MCO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the denial of eligibility for the program and the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals.

FCP rules do not contain explicit descriptions of allowable services, but the Division of Hearings and Appeals has accepted that the basic tenets of medical necessity under the Medical Assistance program apply. MCOs are allowed to develop written policies on the provision of services. Care Wisconsin has a policy on alternative therapy such as the type provided by Oriental Bodywork. See Exhibit 2 in my hearing record; Exhibit 1 is the Care Wisconsin packet and Exhibit 3 is the pre-hearing submission by Ms. Studt. Importantly, such therapy is meant to be utilized on a short term basis, with clear goals for progress. The treatment should be stopped if there is a lack of progress.

In this case the agency allowed the Oriental Bodywork treatment to continue for over eighteen months before calling it into question. When the assessment was done in January, 2016, petitioner continued to complain of extreme pain, so the agency requested information from the provider. [REDACTED] response was subtle. He said that petitioner has not experienced "10" level pain for months, but then he says that she still has "10" level pain but she has adjusted to it so bring the scale downward. He anticipated that the

treatment would continue indefinitely because there is no cure for petitioner's condition. The problem is that petitioner's own reports are that she continues to experience extreme pain. Petitioner argues at page 2 of 2, Exhibit 3 that this treatment is "the only effective pain management techniques she has utilized," but that statement does not jibe with her reports of continued frequent pain. With the combination an apparent lack of success in alleviating petitioner's pain with no end in sight, I conclude that the agency made a reasonable decision to end the treatment.

It is very possible that the treatment could be used as a maintenance/relaxation therapy, and it appears that the parties still are in discussion on that matter. I would not expect such maintenance therapy to be at the frequency provided before the action at issue in this case.

### **CONCLUSIONS OF LAW**

Care Wisconsin correctly ended services for petitioner at Oriental Bodywork because they did not serve to alleviate petitioner's pain and agency policy does not provide for indefinite alternative therapy.

**THEREFORE, it is** **ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

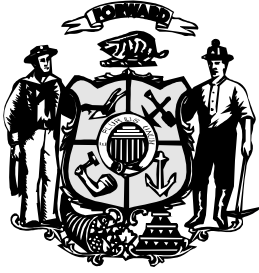
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of June, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 7, 2016.

Care Wisconsin First, Inc  
Office of Family Care Expansion  
Health Care Access and Accountability

